



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 29, 1994

Mr. Charles Karakashian, Jr.
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR94-197

Dear Mr. Karakashian:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552. We assigned your request ID# 24428.

The Texas Department of Public Safety (the "department") has received a request for certain investigation materials. Specifically, the requestor seeks a copy of an investigation arising from the requestor's complaint against Corporal Harold Goggans and Trooper Kervin Largent. You have submitted portions of the requested information to us for review and claim that sections 552.108 and 552.111 of the act except this information from required public disclosure.

First we address your claim that section 552.108 excepts the requested information from required public disclosure. Section 552.108 excepts from required public disclosure:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime
[and]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution

Gov't Code § 552.108. When applying section 552.108, this office distinguishes between cases that are still under active investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. *See generally* Open Records Decision No. 127 (1976).

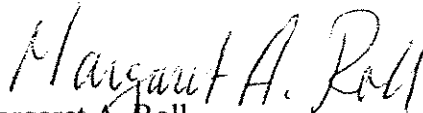
Otherwise, when the "law enforcement" exception is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how and why release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)).

You claim that releasing information relating to employee discipline would have a "chilling effect" on the ability of internal affairs investigators to investigate complaints against department employees and would undermine the department's "integrity." Essentially, you argue that section 552.108 incorporates aspects of the section 552.111 exception. This office, however, has never concluded that section 552.108 incorporates the policy rationale underlying section 552.111. Moreover, the rationale for section 552.111 that you seek to incorporate into section 552.108 was rejected in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ). See discussion of section 552.111 *infra*. We adhere to the test stated above that when the "law enforcement" exception is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how release would unduly interfere with law enforcement. You have not met this test. Accordingly, we conclude that the department may not withhold the submitted information under section 552.108 of the act.

You also claim that section 552.111 of the act excepts the requested information from required public disclosure. Section 552.111 excepts an "interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the section 552.111 exception and concluded that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. In addition, this office concluded that an agency's policymaking functions do not encompass internal administrative or personnel matters, because disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *Id.* at 5-6. The requested information relates to an internal administrative and personnel matter, *i.e.*, complaints filed by a citizen against an employee. Accordingly, we conclude that it is not excepted by section 552.111 from required public disclosure. The requested information must be released in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

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Enclosures: Submitted documents

Ref.: ID# 24428
ID# 24462

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